

1 ALAN I. NAHMIAS (SBN 125140)
2 SCOTT H. NOSKIN (SBN 164923)
3 MIRMAN, BUBMAN & NAHMIAS, LLP
21860 Burbank Boulevard, Suite 360
Woodland Hills, CA 91367
Phone: 818-451-4600
4 FAX: 818-451-4620
Email: anahmias@mbnlawyers.com
snoskin@mbnlawyers.com

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6 Attorneys for Creditor, Rebecca Lim

FILED & ENTERED

JUL 08 2020

CLERK U.S. BANKRUPTCY COURT
Central District of California
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7 **CHANGES MADE BY COURT**
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**

11 In re:
12) Case No.: 2:18-bk-23760-RK
13)
14) Chapter 7
15)
16) ORDER DENYING, WITHOUT PREJUDICE,
17) MOTION OF REBECCA LIM FOR RELIEF
18) FROM DISCHARGE INJUNCTION AND
19) DETERMINATION THAT INJUNCTION IS
20) INAPPLICABLE
21)
22) Date: July 7, 2020
23) Time: 2:30 p.m.
24) Ctrm: 1675
25)
26)

27 The hearing on the Motion of Rebecca Lim for Relief from Discharge Injunction and
28 Determination that Injunction is Inapplicable (“Motion”) came on regularly for hearing before this
Court, the Honorable Robert N. Kwan presiding. Appearing on behalf of Movant, Rebecca Lim,
was Alan I. Nahmias of Mirman, Bubman & Nahmias, LLP. John P. Kreis of John P. Kreis, PC
appeared on behalf of Debtor, Angelica Valdez.

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1 Based upon the pleadings on file herein, the argument of the parties at the time of the
2 hearing, and good cause appearing therefor, the Court denies the Motion, without prejudice, based
3 upon its Tentative Ruling, a copy of which is attached hereto and incorporated by this reference.

4 IT IS SO ORDERED.

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24 Date: July 8, 2020
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Robert Kwan
United States Bankruptcy Judge

1 Attachment – Revised Tentative Ruling as of 7/6/20
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3 Revised tentative ruling as of 7/6/20. Although the court agrees with movant's position that
4 service of the motion is not required on the insurer since the issue of the scope of the
5 debtor's discharge only directly affects the debtor and thus does not "offend fundamental
6 notions of due process" as to the insurer, the court agrees with the debtor that an adversary
7 proceeding is required here because movant seeks declaratory relief regarding the scope of
8 the discharge which is covered by FRBP 7001(9). According to the Bankruptcy Appellate
9 Panel of the Ninth Circuit in *In re Munoz*, 287 B.R. 546, 551 (9th Cir. BAP 2002), it was error
10 to ignore the requirement of an adversary proceeding to grant declaratory relief regarding
11 the scope of the discharge, though it was harmless error in that case where the record of
12 the proceeding was developed to a sufficient degree that the record would not have been
13 materially different, the error would not have affected the substantial rights of the parties
14 and was not inconsistent with substantial justice. Cf. *In re Jahr*, BAP No. EW-11-1538-
15 MkHJu, 2012 WL 3205417 (9th Cir. BAP 2012). It is arguable that the same result should
16 be reached here since the court does not see how this case materially differs from Munoz,
17 but the court feels that the proper procedure should be respected, and an adversary
18 proceeding is required by FRBP 7001(9), though the matter would likely be decided on a
19 motion for judgment on the pleadings since it appears that there are only legal issues to be
20 resolved. *In re Munoz*, 287 B.R. at 554-555; *In re Beeney*, 142 B.R. 360, 362-363 (9th Cir.
21 BAP 1992); see also, *Blixseth v. Credit Suisse*, 961 F.3d 1074, 1083-1084 (9th Cir. 2020)
22 (observing "[a] bankruptcy discharge thus protects the debtor from efforts to collect the
23 debtor's discharged debt indirectly and outside of the bankruptcy proceedings; it does not,
24 however, absolve a non-debtor's liabilities for that *same* 'such' debt.") (construing 11 U.S.C.
25 524(a) and (e) as to an exculpation clause in a Chapter 11 reorganization plan releasing
26 liabilities arising from the bankruptcy proceedings and not the discharged debt; *italics in
27 original*).
28

In light of this tentative ruling, the court need not rule upon the debtor's evidentiary
objections to the declaration of John P. Rosenberg.

Deny the motion without prejudice because an adversary proceeding under FRBP 7001(9)
is required. However, no notice in the adversary proceeding needs to be given to the
insurer as argued by debtor.

Deny movant's request to grant her motion as a motion for stay relief without prejudice
because: (1) the request is procedurally improper to raise a new argument or matter in a
reply as indicated by LBR 9013-1(g); and (2) the motion does not give fair notice of the stay
relief sought by movant to all the parties in interest, including the trustee, as required by
FRBP 4001, LBR 4001-1 and 9013-1.

Appearances are required on 7/7/20, but counsel and self-represented parties must appear
by telephone.

TO PARTIES WHO INTEND TO APPEAR AT THE HEARING ON THIS MATTER:

1 PLEASE TAKE NOTICE that the court hearing before Judge Robert Kwan of the United
2 States Bankruptcy Court for the Central District of California will be conducted
3 telephonically. However, instead of having to physically appear in court, you must appear
4 by telephone because the court is not conducting in person hearings on that date in light of
the public health conditions from the COVID-19 pandemic. The courtroom will be locked;
parties must appear by telephone and will not be permitted to appear in the courtroom.

5 In order to appear for the court hearing by telephone, you will need to arrange to make the
6 telephone call through CourtCall, the contract telephone appearance service, which
7 arranges telephone appearances before this court. CourtCall's telephone number is: (866)
8 582-6878. Through August 31, 2020, CourtCall is offering discounted rates to attorneys and
9 FREE access for parties who do not have an attorney (pro se or self-represented parties).
10 You need make an advance reservation with CourtCall to appear by telephone before the
11 hearing, preferably a week before the hearing, and no later than the day before the hearing.
12 After you made your telephone appearance reservation with CourtCall, on the day of the
13 court hearing, you will need to call CourtCall at its telephone number at least 15 minutes
before the scheduled hearing, and identify the United States Bankruptcy Court in Los
Angeles as the court and Judge Robert Kwan as the judge, and the CourtCall operator will
put you into the telephonic court hearing. Given the large demand for telephone court
appearances, there may be some delay in connecting to the hearing. If you are having
problems connecting to the hearing, please call and advise Judge Kwan's courtroom deputy
at (213) 894-3385.